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CERTAIN CONTRACTS MADE BY WAR DEPARTMENT

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1918
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HEARINGS

BEFORE

THE COMMITTEE ON RULES

HOUSE OF REPRESENTATIVES

SIXTY-FIFTH CONGRESS

THIRD SESSION

ON

H. RES. 484

DECEMBER 28, 1918

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

UC 263
.A5
1918

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CERTAIN CONTRACTS MADE BY WAR DEPARTMENT.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Saturday, December 28, 1918.

The committee met at 10.30 o'clock a m., Hon. Edward W. Pou (chairman) presiding.

STATEMENTS OF HON. NEWTON D. BAKER, SECRETARY OF WAR; MR. BENEDICT CROWELL, ASSISTANT SECRETARY OF WAR; MR. EDWARD R. STETTINIUS, DIRECTOR OF MUNITIONS; MR. GOLDTHWAITE H. DORR, ASSISTANT DIRECTOR OF MUNITIONS; AND LIEUT. COL. F. W. N. CUTCHEON.

The CHAIRMAN. Mr. Secretary, we have before us H. R. 13274, and as there seems to be a desire for some explanation, we will be obliged to you for any comments you may care to make.

Secretary BAKER. Thank you, Mr. Chairman, very much. As I understand this hearing, it is to determine whether the exigencies are such as to give this measure priority of consideration by a rule of the committee. At the time the armistice intervened the War Department was, of course, busy both on this side of the ocean and the other in accumulating supplies of all kinds in anticipation of the continuance of the war.

The number of contracts outstanding was very great, and in addition to those which had been formally executed there were very large numbers of contracts in process of execution, some of them more or less formalized and some of them quite informal, all of them in the process of making. Those contracts consisted of things like this, verbal or letter orders to manufacturers or merchants or producers that they should produce and supply to the department certain types of equipment or supplies.

The practice of the department, in order to expedite production and to cut red tape as far as possible, was to call the manufacturer in, agree with him on what he was to do, and tell him to go ahead and start, and after he had gone to work, the formal contract would be reduced to writing, signed by the Government, and sent to him for execution; and sometimes his work had gone a considerable distance before the actual written contract was tendered to him for signature. This is true in Europe just as it is here. Gen. Pershing's supply officers would work out an arrangement with a manufacturer that he should produce certain things, and tell him to go ahead and start doing it, and in order not to lose time, they would start him off before the actual written contract was made, and then the written contract would follow.

When the armistice intervened the Comptroller of the Treasury held that it was no longer possible for the War Department to make formal and proper contracts for war supplies, on the theory that we no longer needed them, and we could not make contracts for things which we did not need. Therefore some form of legislation is necessary to make formal these informal agreements and enable the Government to do equity by persons who, relying upon it, have either increased their facilities or produced new facilities or partially performed some informal contracts, made some deliveries, or gotten ready to make delivery; in other words, put themselves in a state of disadvantage and loss, relying upon the Government's order and their own expeditious attempt to comply with the Government's order and supply the things needed.

In this country the number of these informal orders is very large, and they are very varying in character. You are not interested, I fancy, in the details of the legislation and whether or not it is adequate to meet the need or not, but these cases are very serious in character. Sometimes, for instance, a contracting officer of the Government will have authorized a written contract to be made, and it will be found to have been signed by one of his subordinates, because the particular contracting officer was away, and it was intended at some future time to add his formal signature to it, but it was signed by his authority by a subordinate. The comptroller rules those to be informal contracts, and that it is no longer possible for the proper authorized officer to add his signature so as to make the contract enforceable and formal. Sometimes there is no written evidence of the contract beyond letters or telegrams or memoranda of conversations.

This legislation, therefore, is for the purpose of enabling the Government justly and economically to recognize all of the obligations which have been created in this strenuous and hurried period of rapid accumulation of supplies.

The importance of the legislation is very great from two points of view. In the first place, of course, it is essential that the Government should pay its just obligations, whatever they are; and in the second place, it is important that it should do it speedily. Nothing is more necessary to the interests of the whole country than that all of these persons who are creditors of the Government should be able to quickly liquidate their claims and get their money so they can embark on peace-time industry and employ labor and set the business of the country going again.

Mr. Stettinius is here. He has been in Europe for many months as a special representative of the War Department about business matters and has been doing, if I may say so in his presence, a service of incalculable value to the Government. He was talking to me yesterday and to-day about the importance of this legislation abroad. There are very large numbers of cases over there where the only alternative the Government has is to allow contractors to go on and finish things which we do not need or to order an immediate discontinuance and liquidate our obligation by a comparatively small payment. If this legislation is at once passed, it is thought that for a relatively small sum the American Expeditionary Force in France will be able to cancel its obligations and prevent the accumulation

of vast quantities of things that are no longer needed for the Government, while if this legislation be not passed our written obligations are such that manufacturers and producers will have to go on and produce very vast quantities of unneeded supplies. So that the economy of the Government, as well as the good faith of the Government, requires urgently that this legislation shall be passed and the department put in possession of power to adjust all of these equitable claims, pay off as rapidly as we can, and pay as little as we can, contracts, formal and informal, which would, if left alone and not adjusted in this fashion, lead to the production and accumulation of very great additions to our present volume of supplies, which is so great that we can hardly find storage for them.

Mr. CAMPBELL. Mr. Secretary, may I ask you a question?

Secretary BAKER. Certainly.

Mr. CAMPBELL. Are the persons contracted with producing now under these informal contracts in Europe and here?

Secretary BAKER. I can not answer for Europe. I should suppose they are to some extent. Here I can not give a comprehensive answer. Most of them have discontinued. In most cases in this country it will be simply a question of adjusting the claim.

Mr. CAMPBELL. You mentioned Mr. Stettinius having made the statement that there were contracts there which could be terminated and settled for less by stopping production and avoiding the accumulation of a larger amount of material than really was necessary?

Secretary BAKER. I was thinking more particularly of executed contracts in those cases than these informal contracts.

Mr. CAMPBELL. This bill has nothing to do with the formally executed contracts.

Secretary BAKER. This bill gives the Secretary of War power, as I remember, to substitute a new contract for an old contract, a new contract which will diminish the quantity to be delivered or to cancel an old contract and make a payment merely covering the expenditures already made on the faith of the outstanding contracts. Mr. Stettinius is here, however, and he is very much fuller of it than I am.

Mr. CAMPBELL. Have you some idea of the extent of the contracts in this country under which the Government has some obligation?

Mr. CROWELL. There are 6,669 contracts, aggregating $1,675,951,000 that we know of right now.

Mr. CAMPBELL. They are informal contracts?

Secretary BAKER. Informal for one or the other of the reasons I have described, either not signed by the proper contracting officer or signed only by the Government and not signed by the contractor at the end as the technical requirement of the statute is, or that they received a verbal order or a telegraph order or a letter order as distinguished from——

Mr. CAMPBELL (interposing). How did the minds of the contracting parties get together on these matters that are informal and under which production has been commenced?

Secretary BAKER. Ordinarily they would be called to Washington, sit down with the contracting officer, agree on the terms for the production of the stipulated thing, make a comprehensive but informal minute of it, and then the contracting officer would say, "All right; now go ahead and start."

Mr. CAMPBELL. Without any further memorandum or without any memorandum at all?

Secretary BAKER. There woult be a memorandum, of course, and it would all appear there.

Mr. CAMPBELL. But nothing signed?

Secretary BAKER. Ordinarily not signed by both parties or if not signed by either it was immediately reported as a purhase order.

Mr. CAMPBELL. Are there memorandums in the department now that would enable the department to effect an adjustment with these contractors?

Secretary BAKER. Oh, yes. Every order of that kind, however informal it is, is the subject of record in the department.

Mr. CAMPBELL. You spoke of orders by telephone?

Secretary BAKER. Yes.

Mr. CAMPBELL. That was an order after the minds of the parties had come together?

Secretary BAKER. Yes; unless it was for some standard article. I instanced the telephone, perhaps hastily. Unless it was some standard article, it would not be ordered by telephone, of course; but there are complete records in the department showing every outstanding order and obligation.

Mr. CAMPBELL. Do you anticipate trouble or difficulty in arriving at an adjustment with these parties?

Secretary BAKER. No; we have had very little difficulty—amazingly little.

Mr. CAMPBELL. Is there a disposition on the part of contractors with the Government to boost the value of their product or the value of the improvements they have made in their plant for the benefit of the Government?

Secretary BAKER. None of that is possible.

Mr. CAMPBELL. In what way can you hold a rein over that?

Secretary BAKER. That is all agreed to beforehand. Every betterment to a plant is agreed to and the method of determining the value of it when the contract comes to be settled is a part of the contract.

Mr. CAMPBELL. And that is in the formal contract?

Secretary BAKER. And the informal ones, as well. Nobody has ever been carte blanche to do as he pleases in his factory and settle afterwards. We have always agreed beforehand just how the betterments are to be accounted for.

Mr. CAMPBELL. What I was trying to get at is what way you have of arriving at a definite conclusion with the party that made this contract verbally and informally. He may be dead and the party who spoke for the department may not be connected with the department. What way will the Government have of arriving at a conclusion with the firm?

Secretary BAKER. It is unwise for me to answer that question, because I have not the detailed knowledge that Mr. Dorr has; but it is perfectly clear that as to each contract there are data and memoranda and records of the contract of so complete a character that there can be no dispute about those items. They simply have not gotten themselves written into the kind of formal contract which the statute requires.

Mr. CAMPBELL. So there is some memorandum——

Secretary BAKER (interposing). Oh, complete.

Mr. CAMPBELL (continuing). Upon which the Government can protect itself?

Secretary BAKER. Complete memoranda. I am right about that, am I not, Mr. Crowell?

Mr. CROWELL. Yes, sir.

The CHAIRMAN. Mr. Secretary, I would like to invite a little explanation which might be brought out by the question as to why the intervening of the armistice makes this legislation necessary. If the armistice had not been agreed to, all these contracts would have been binding, as I understand it.

Secretary BAKER. Yes.

The CHAIRMAN. Somebody had authority to act in the premises until the armistice intervened?

Secretary BAKER. Yes.

The CHAIRMAN. Now, I would like for my own enlightenment to have you give us your views as to just why the intervening of the armistice makes this legislation necessary.

Secretary BAKER. I can only give the comptroller's views. The comptroller says that the moneys which have been appropriated to buy things which are needed for the war can not be obligated and pledged by the department for things which obviously will not be needed for the war. If, for instance, the Congress appropriated money to buy 10,000 motor trucks for the war and we had made an informal agreement for the 10,000 motor trucks and then the war came to an end, the comptroller holds we can not now make a formal agreement with that contractor, by way of compromise and adjustment, to receive from him 1,000 motor trucks, because they are no longer needed for the war.

Mr. SNELL. Technically, are we not still in war?

Secretary BAKER. I think so. I have had no opportunity to discuss the matter with the comptroller.

Mr. SNELL. If, technically, we are still in war, I do not see why the regular rules and procedure would not apply.

Secretary BAKER. Well, I confess I agree with you entirely, but we are asking the legislation to help us with the comptroller.

Mr. HARRISON. That question is now up in this case about the taking over of the cables. I noticed yesterday they were discussing that one point.

Secretary BAKER. Of course, it is theoretically possible for either party to the outstanding armistice to denounce it on 30 days' notice and the war would be on again.

Mr. CAMPBELL. Was there any stipulation in your formal contract that terminated the contracts on the cessation of hostilities?

Secretary BAKER. All of the later contracts made within the last period of a good many months provide for termination at the will of the Government, as I recall it.

The CHAIRMAN. At the will of the Government; but it did not mention the cessation of hostilities or the end of the war?

Secretary BAKER. No; it did not mention the cessation of hostilities.

Mr. HARRISON. Is this bill unanimously reported from the Committee on Military Affairs?

Mr. DENT. Yes. I can answer that question, Mr. Chairman.

The CHAIRMAN. In any event, the only purpose of this legislation is to enable the department to save the Government an enormous expenditure. It should only have that effect.

Secretary BAKER. To save the Government an enormous expenditure, but incidentally and in addition to that it does do the other thing; that is, it enables the Government to pay its good-faith obligations and restore to persons who have embarked on expensive processes at the invitation of the Government and to help in the war—it saves them the delay and the long litigation in the Court of Claims and enables them to get back to normal industry speedily.

Mr. SNELL. Mr. Secretary, did I understand you to say that this legislation was of more importance in connection with the foreign orders?

Secretary BAKER. Not of more importance. I think it is of equal importance on both sides. Mr. Stettinius is very clear as to its very urgent importance abroad, and Gen. Pershing has cabled us to that effect.

Mr. HARRISON. Mr. Secretary, it may be outside of the scope of this bill, but has your department any authority now to dispose of this great amount of things which you have amassed since the war began?

Secretary BAKER. Yes; we have authority to dispose of everything not needed for military purposes.

Mr. HARRISON. That does not require new legislation?

Secretary BAKER. No, sir. Mr. Stettinius illustrated to me this morning this kind of case. I really am depriving you of a pleasure when I am telling you what he would say to you better; but he illustrated to me the case of materials which have been ordered in neutral countries like Spain and Switzerland, where we have no opportunity, of course, to appeal to any sort of patriotic motive on the part of the contractor. They simply have a contract and we have to make a business adjustment with them. Now, it is very necessary for us to do that speedily. The longer that hangs on the the more the interest money grows and everything else involved in it.

Mr. GARRETT. Mr. Secretary, did the contract made abroad contain the same provision you mentioned with reference to stopping at the will of the Government?

Secretary BAKER. No; they were firm contracts. Mr. Stettinius, for instance, went to England and negotiated there some artillery purchases. So far as I know those had not been reduced to formal contracts, in some instances.

Mr. STETTINIUS. They had not, but the verbal negotiations were conducted with a very distinct understanding that we would agree upon provisions giving the United States Government the right of cancellation. So that we have had no difficulty at all in regard to those negotiations. If I may say a word here——

Secretary BAKER. I would be glad if you would.

Mr. STETTINIUS. I would say that 90 per cent of our purchases in England have been made from or through the British Government, the British Ministry of Munitions, or the British War Office, on what are termed informal purchase orders: that is, purchase orders signed by the purchasing agent but not accepted by the British Government;

in other words, there are, in very few instances, formal contracts. The British Government has proposed that in effecting settlements they will do for us as they do for themselves. They recognize, for instance, the equitable right of a contractor to claim profits, and they will negotiate or they will trade and in some instances they will concede profit and in other instances they will not. If the contractor had a very large and profitable business he would be merely reimbursed as to his actual outlay. If, on the other hand, the situation is one where special arrangements have been made and a considerable amount of time and money spent in preparing for manufacture and nothing delivered they may allow some profit. It is a case of trade in each instance and we, of course, should be in position where we will fully indemnify and protect the British Government in respect to any arrangements it may make for us of the same character as it may make for itself.

Mr. CAMPBELL. We are to settle with the British contractors through the British Government.

Mr. STETTINIUS. Quite; except possibly in 10 per cent of the cases.

Mr. SNELL. And on the same basis that the British settle?

Mr. STETTINIUS. Yes.

Secretary BAKER. And in the same way with the French Government in most instances.

Mr. STETTINIUS. In the case of the French, 50 per cent or over of our purchases were made from or through the French Government. All of our ordnance contracts are in very excellent shape and a very substantial amount of money has been saved for the United States Government. We have some other contracts that are in process of negotiation now. Generally speaking, and answering a question which I think you answered earlier, I might say that work was stopped, regardless of our rights, very early in the game—I think on November 14. We took the position that we were not in the slightest degree concerned in the labor position of France or England, and we would not be responsible for any labor or material used in the manufacture of stuff we did not want.

Mr. SNELL. Then practically all of those contracts have been already stopped?

Mr. STETTINIUS. They have been stopped under assurances that we would dealy fairly and equitably.

Mr. SNELL. That would be expected, of course.

Mr. STETTINIUS. Yes; that we would make them whole. Generally speaking, we have said, "We will make you whole and protect you against any loss." In dealing with the French Government we have made the very positive statement that we understood clearly that we were getting all materials at cost, and therefore we would expect to fully reimburse them and protect them against any loss.

Mr. CAMPBELL. Mr. Stettinius, would you mind telling the committee the method you expect to employ in arriving at an adjustment with an English contractor, for instance, who has, for the use of the United States, made some enlargements to his plant and was suddenly stopped from producing the product contracted to be produced?

Mr. STETTINIUS. We do not expect to deal with that situation at all, because there is none. Fortunately, in England there have been no orders that come within the class that Mr. Baker refers to; in fact,

I think there is only one case, so far as I know, in which work had started without some kind of an order having been issued. What we require more than anything else on the other side is the right to make compromises. In other words, if we have given a man in August or September, or at any other time, an order for $100,000 worth of materials and none has been delivered, we want to have the right to give him $10,000 and call the whole thing off. We do not want to be forced to take delivery of something we do not want.

The CHAIRMAN. That is really the paramount purpose of this legislation, as you have just expressed it, is it not?

Mr. STETTINIUS. So far as the American Expeditionary Forces are concerned I would say so. What other point, Colonel, have you in mind to recognize the form of purchase?

Col. CUTCHEON. We want to recognize the contracts which are wholly informal, sometimes even to the extent of being merely requests upon which work has been started and partially performed.

Mr. STETTINIUS. That is not true in England.

Col. CUTCHEON. Not in England, but in France.

Mr. STETTINIUS. To a very limited extent in France.

Col. CUTCHEON. It is to be remembered, also, that our contracts with Governments are merely informal, because, of course, it has been impossible to make treaties or conventions.

Mr. STETTINIUS. They have all been in writing, however.

Col. CUTCHEON. Yes; in one form or another.

Mr. SNELL. But they would not be considered formal contracts.

Col. CUTCHEON. They could not be, because there were no means of making formal contracts except by treaty.

Mr. STETTINIUS. These were simply requests upon the French Government to make deliveries to us of certain materials.

Mr. GARRETT. Perhaps I do not understand the situation exactly, but I got the impression from what was said a few moments ago that our settlement of the contracts made abroad would be made through the respective Governments; in other words, the contracts made in England would be settled through the British Government and not with the individual.

Mr. STETTINIUS. That is true to a large extent; perhaps 90 per cent in England and probably 50 per cent in France. That is not true in Spain and is not true in Switzerland or in Italy.

Mr. SNELL. Have we very large contracts in those countries?

Mr. STETTINIUS. No.

Mr. SNELL. They would be comparatively small as compared with England and France?

Mr. STETTINIUS. Oh, yes.

Mr. GARRETT. In so far as those contracts are to be settled through the respective Governments, there is no legislation necessary as to them, is there—if it is an agreement between the two Governments?

Secretary BAKER. But that is just what it is not. It is not that; it is really an indirect agreement between the War Department of the United States and A B, a manufacturer, negotiated through the British Government.

Mr. GARRETT. But if I understood correctly, it is being negotiated through the British Government, say, and the settlement will be made with the British Government.

Secretary BAKER. Well, it is entirely likely it will be through its agency; but there is no treaty between teh United States and Great Britain, for instance, that Great Britain shall supply to the United States a certain number of motor cars, if that was what we were buying, or a certain number of pieces of artillery. We have simply said to the British war office or to the British minister of munitions, "We would like to have so many pieces of such sized artillery," and Great Britain has sent out word either to her controlled factories or to her private factories or to her own factories, "Get ready to make that number of pieces of artillery for the United States." They have now bought the material, made the necessary forgings, gone somewhat forward with the matter, and are suddenly stopped. Now, there is no treaty between the United States and Great Britain covering that.

Mr. GARRETT. That question will probably arise in the negotiation of the peace treaty, will it not?

Secretary BAKER. I hardly think so. I think it will be treated as a pure business question, and what will ultimately happen will be that Great Britain will say to A B, the manufacturer, "Now, just how much have you put yourself out getting ready to do what we told you to do for the American Expeditionary Forces?" and then they will say so many hundred thousand dollars or pounds, and the United States will pay that money to A B direct, instead of paying it through the British Government.

Mr. GARRETT. And that will be done in any event, without any legislation?

Secretary BAKER. No; that is covered, as I understand it, by the comptroller's prohibition.

Col. CUTCHEON. May I say a word here?

Secretary BAKER. Yes. Gentlemen, this is Col. Cutcheon, who has been dealing with these matters on the other side.

Col. CUTCHEON. If I may explain just one difference there, in Great Britain there are three classes of contracts. There is the contract made direct with the British Government, such as Mr. Stettinius made, and settled recently. That was a contract for artillery which the Government only could make and dispose of. It had subcontractors, but it dealt with the subcontractors for itself and sold the artillery to us. Then there is a form of contract, which was made during the early part of the war and of which there are a great many examples, a contract which the Government placed for us, so to speak, as our representative, as a middleman. That is the form of contract which, Mr. Secretary, you had in your mind a moment ago. There are a great many of those. In those cases we did not deal, and never have dealt, with the contractor, but we might pay the contractor directly or we might pay him through the British Government. At one time we were paying the British Government for him. Then for a time we paid him direct under the Government's instructions, and recently we returned to the principle of paying through the Government. Then, recently, there have been other contracts made with commercial houses by the British Government for us, but made in its own behalf and upon its own responsibility. Our relations being directly with the Government, it is just as if they were the producers. Those three conditions exist in Great Britain, and have to be observed. In Great Britain they have also many termina-

tion clauses. They have certain termination clauses which are incorporated in their contracts by the mere operation of order and regulation. They have other special termination clauses, and many of our contracts are subject to their termination clauses. Practically all contracts which are placed through the British Government are subject to some termination clause.

In France, we have two classes of contracts——

Mr. SNELL (interposing). Colonel, may I ask right there what is the general condition of that termination clause?

Col. CUTCHEON. There is what is known as the war-break clause which is applied by the British Government in practically all cases in which they do not apply special termination clauses, and that provides for two weeks' notice, for manufacture during the two weeks for taking the product of the two weeks, for the return to the British Government of everything which they may have furnished and the repayment to the contractor of whatever he may have paid the British Government, and for the purchase by the British Government or the indemnification of the contractor for materials purchased outside and which have been rendered useless by the termination of the contract. In that case, the loss being measured by a resale or disposition of the article.

Mr. SNELL. All of those contracts would be terminated long before this time.

Col. CUTCHEON. No, sir; not all of them. Some of them have been terminated. Those which fall under the operation of that particular clause; yes.

Mr. SNELL. That is what I mean.

Col. CUTCHEON. But there are a great many special termination clauses which are incorporated, particularly in important contracts. For example, in the artillery and the ammunition contracts there are almost invariably some special termination clause running from 6 weeks to 12 months, depending upon the nature of the article which was the subject of the contract. When Mr. Stettinius negotiated the tentative settlement of the artillery contract, it was agreed as to munitions six weeks should be taken as the average termination clause, which, plus the date of delivery to France, made a three months' delivery.

In France we have, generally speaking, two classes of contracts, contracts with the French Government direct such as for artillery and munitions, and contracts with commercial houses which the French Government has had nothing to do with except that it visés the transaction in the sense of licensing it, viséing the price where a price has been agreed upon. In a great many cases, I should say in more than 90 per cent of our contracts, they are not contracts at all in the sense that we would use the word in this country or in any common-law country. They are mere orders, mere requests to produce, and that is true of practically everything purchased by the French Government, and it is true, I should say, roughly speaking, of 90 per cent of the contracts made with the French commercial houses; and if this ruling of Comptroller Warwick is a sound ruling which must be observed—and I suppose it must be observed for the purpose of expedition whether it is sound or not—we need remedial legislation as to practically every obligation of the United States in France.

Mr. HARRISON. Is that ruling in writing?

Col. CUTCHEON. Yes.

Mr. HARRISON. Mr. Chairman, may we not put that in the record?

Mr. DENT. Mr. Chairman, may I suggest that the ruling is printed in the hearings before the Committee on Military Affairs.

Col. CUTCHEON. There is just one other consideration I was going to suggest, if I may, and that is in France the French Government does not treat its own nationals in the way we treat ours, and that the French Government deals with every man, whether he is a citizen of France or not, upon a purely business basis; his patriotism is not appealed to, and he is not treated arbitrarily because he is a national of France. Where a contract is canceled arbitrarily, compensation is made to him for his loss of profits. We would place ourselves in the position of practically repudiating our obligations in Frence if we were to suggest to the French national that he should throw away all his profits without some consideration.

Mr. CAMPBELL. Are you able to state the number of informal contracts in France and England under which materials have been furnished to the Government of the United States?

Col. CUTCHEON. If you leave out construction contracts, I think you may say that they are all informal.

Mr. HARRISON. What does it amount to?

Mr. CAMPBELL. I mean contracts that have not been executed by the parties formally.

Col. CUTCHEON. You mean in which there are no writings, there are no formal contracts in the sense the comptroller would use the phrase except in construction matters. There may be a very few exceptions. There are only a few cases in the purchase orders, which are written, which——

Mr. CAMPBELL (interposing). What I want to get at is the number of the contracts and the amount involved by the contracts.

Col. CUTCHEON. Oh, they would run into the thousands; I can only put it in that way. It would be safe to say that a minimum in France would be 2,000,000,000 francs of contract obligations upon which, of course, only a portion of that is an absolute debt.

Mr. STETTINIUS. But purchase orders have been placed.

Mr. CAMPBELL. Purchase orders have been placed under probably 1,000 or more contracts?

Col. CUTCHEON. Oh, many thousand.

Mr. STETTINIUS. But the number of orders that have been informally placed without any purchase orders is negligible.

Secretary BAKER. In other words, there is written evidence of the terms of every one of these understandings.

Col. CUTCHEON. That would be true except with the Government.

Mr. CAMPBELL. In what way will a representative of the United States be able to protect the United States in reaching an adjustment of these contracts?

Col. CUTCHEON. In two ways, sir. First, we have in every case, with the exception of a negligible number of cases, a written order, which, as between a commercial house in this country and another commercial house in another country, would be considered a contract. It is not a contract simply on account of the technical provisions of the statute of the United States which the comptroller seems to be

of the opinion applies in France. Personally, I think he is wrong in that. A reference to that purchase order which, like in the case of a commercial house, almost invariably states the subject matter, the date of delivery, the unit price, and then the aggregate price and the place and method of payment, will give you the complete data with respect to the order and the payment to be made when it is supplemented by a record of how much has been delivered, and what the process of the manufacture is, and what progress has been made, etc. With the French Government that is not quite true, but of course with the French Government you are dealing with a diplomatic situation anyway, and in a broad sense you can not make a binding contract. With the French Government many of our orders are simply for so much of a certain thing, for instance, shells, to be delivered as quickly as possible, the price not being stated, but it being understood always that the price should be cost in the sense that there shall be no profit to the Government.

Now, in the second place you have the assurance that we will not be obligated by reason of either, that nobody can compel us to pay anything on any of these contracts, and that in the last analysis we adjust the settlement to suit ourselves; that is to say, if we do not think the debt is justly due we can not be compelled to pay it. There is no process which runs against the United States in France.

Mr. CAMPBELL. Secretary Baker spoke a moment ago of materials amounting to salvage in the factories upon which an adjustment will have to be made. In what way will that adjustment be reached in France?

Col. CUTCHEON. Mr. Stettinius can answer that question better than I can. My connection with these things has been advisory, and I have not dealt with the business side of it. The practical situation in one service with which I am familiar is this: A board of officers has taken up the question with the French service of what can well be delivered to us, what we can wisely accept and what should be rejected, and what should be allowed for it, giving us the option to take a thing which would seem to be needed or reject it, as we see fit, and receive the salvage value for it. It would then come back to the head of the service to determine whether the article itself should be taken or rejected and the salvage value accepted, and in an important case they would almost invariably cable to the War Department here for instructions or advice, as the Secretary might determine to give it.

Mr. CAMPBELL. Is it intended that these adjustments shall be made with the Governments of foreign countries and with the contractors through a commission or through representatives of the War Department?

Col. CUTCHEON. I will have to refer you to the Secretary or to Mr. Stettinius to answer that.

Mr. CAMPBELL. What is the plan of making adjustments under these contracts?

Mr. STETTINIUS. All purchase orders placed with the French Government will be adjusted directly with the French Government.

Secretary BAKER. But Mr. Campbell wants to know, Mr. Stettinius, who in France will represent the Government of the United States in negotiating these settlements.

Mr. STETTINIUS. Gen. Harbord is the commanding general of the service of supply and will be in general charge, working through the chiefs of the respective bureaus.

Secretary BAKER. If it is an ordnance contract, for instance, it would be directly under Gen. Rice, who is the chief ordnance officer there. They are advised by boards of officers who are experts, selected because of their expert character; and in addition to that there are a number of very eminent business men associated with the American Expeditionary Force who are general advisers in all these matters. Mr. Stettinius has been over there for a good many months representing the War Department as its special and direct representative in doing these things and has personally negotiated and practically settled contracts amounting to very, very many tens of millions of dollars with both the French and the British Governments on terms that seem to me very favorable.

Mr. SNELL. As I understand the whole situation, if this was simply a matter between individuals you have all the data necessary and could settle it up very quickly.

Col. CUTCHEON. Yes, sir.

Mr. SNELL. And you want this legislation passed so you can act on the part of the Government the same as if it was an individual?

Mr. STETTINIUS. Yes; and merely, as I understand it, on account of the ruling of the comptroller.

Mr. SNELL. You have all the data and everything necessary and can go ahead and settle it up very quickly?

Mr. STETTINIUS. Yes; I do not think there is any difficulty about it at all.

Mr. SNELL. Except the comptroller says you can not do it as a representative of the Government.

Mr. STETTINIUS. Of course, the main thing we want to be in position in France to do is to make suitable reimbursements to the contractors in lieu of being required to take something we do not want. We can let the purchase order stand if the comptroller maintains his attitude.

Mr. SNELL. And it is better to pay something and be rid of the whole matter than to have to take something that we do not want?

Mr. STETTINIUS. Certainly. For instance, in aircraft there have been a vast number of orders placed for small things. I think in the case of England there have been several hundred orders, and while the aggregate is relatively small, they call for special things for which we have no earthly use.

Mr. SNELL. And it would be an absolute loss to have to take them?

Mr. STETTINIUS. Yes. A general ruling has been made that the contractors will settle for 12½ per cent of the contract. That was the arrangement that the English worked out in respect to their own contractors, and now they have said, "You can come in on this thing if you want to," and, of course, we want to.

The CHAIRMAN. Has it been possible to make any estimate of the saving to the Government in case this legislation is agreed to?

Mr. STETTINIUS. No, not yet; but I would not have any hesitation at all in telling you that it would run into the tens of millions of dollars.

Secretary BAKER. The illustration Mr. Stettinius has just given, it seems to me, is a capital one, and that is that the contractors are to be paid at the rate of 12½ per cent of the total contract. So, if you had a contract for $1,000,000 you would pay $120,000 and be quit of the entire transaction.

Mr. SNELL. Anybody would think that that was a fairly decent settlement, if you only had to pay 12½ per cent.

Mr. STETTINIUS. That is the basis on which the British as well as the French are handling their contracts.

Mr. SNELL. If you get out of the contracts in that way, it would seem to me that that was a good business proposition.

Mr. GARRETT. You would make no distinction between the contracts abroad and the contracts here at home?

Mr. STETTINIUS. I was concerned in the contracts abroad.

Secretary BAKER. I think there ought to be no distinction made, Mr. Garrett. We are in exactly the same situation here in the United States.

Mr. SNELL. The business conditions here might force you to make some difference in settling the contracts. For instance, we are extending some contracts here, as I understand it, to take care of the labor situation.

Secretary BAKER. Hardly that.

Mr. SNELL. While, as Mr. Stettinius has said, we are not interested in the labor situation in foreign countries.

Secretary BAKER. We have not quite done that in the United States. We have made a tapering-off period in order not to throw everything into the air at one time.

Mr. SNELL. That is what I say. You have done that to a certain extent, while, as Mr. Stettinius has said, they immediately canceled contracts over there whether they had any right to do so or not, because they were not interested in the labor situation.

Col. CUTCHEON. But in those cases the French Government went on at all times.

Mr. GARRETT. May I suggest this thought, Mr. Secretary? Of course, theoretically, all people everywhere have dealt with the Government with a notice of the limitations of law. I say, theoretically, because I take it that that is an absolute statement of fact, but there might be, it seems to me, more reason in the case of foreign contracts where, although they dealt theoretically with the notice of the limitations prescribed by the statutes of the United States, yet the physical situation is such that it might put them on an entirely different plane from the situation of contractors here in the United States.

Secretary BAKER. Mr. Garrett, I do not think that. I do not think the Government of the United States ought to pay a cent to a foreign contractor or to an American contractor that is not just; and I mean just in the sense of equity, but I think it ought to pay every cent that is equitably due to either.

Mr. GARRETT. Absolutely.

Secretary BAKER. And when you are dealing with the pressure of war necessity——

Mr. GARRETT (interposing). I think there will be absolutely no disagreement in the mind of any honest man upon that principle which you have just laid down.

Secretary BAKER. So far as your other suggestion is concerned about knowledge of the law, knowledge of the law is an imputed virtue that does not often exist.

Mr. SNELL. Does the average contractor know anything about such statutes, or any of these conditions?

Secretary BAKER. No; they do not; and, as a matter of fact, they think of the war powers of the Government, and the Government officer comes along and says, "I want your factory to do this thing," and his reflection is, "If I do not do this they will take my factory and do it themselves." That is the power which the War Department has had. Therefore, they have not stopped on account of the legal character of the persons they were dealing with, or the formalities involved, but have jumped in and gone ahead.

Col. CUTCHEON. The law only imputes knowledge of the law of the land, and not knowledge of the law of another land.

Secretary BAKER. Yes; of course, the French have an additional reason for escaping the imputation.

Mr. SNELL. But the average contractor did not pay any attention to things of that sort.

Col. CUTCHEON. If they had, you would never have gotten any deliveries.

The CHAIRMAN. Mr. Secretary, we would be obliged to you if you would indicate any of the other gentlemen whom you would like for us to hear.

Secretary BAKER. Mr. Dorr, the assistant director of munitions, and Mr. Crowell, the Assistant Secretary of War, are here, and I should be very happy if you would now hear Mr. Crowell.

Mr. CROWELL. Mr. Chairman, I would like to mention one point, and that is what will happen if we do not do this. The amount of the contracts that we know about is $1,600,000,000. These contractors have patriotically gone ahead and they have their working capital tied up in these contracts, and the opinion of most of the men who have gone into this matter is that a resumption of business in this country is not possible until these matters are settled.

Mr. RODENBERG. That is the point I wanted you to bring out.

Mr. CROWELL. That is the vital thing to-day, and we are all interested in settling these matters in a speedy and not a slow way. We are pouring back men out of war industries and out of the Army, having demobilized over half a million men from the Army to date. Men from construction Army work have been poured back into industry, over 100,000 of them. It is impossible to tell how many have been discharged from war industries, because most of those industries have been cut short and comparatively few of them are running to-day. The tapering off has applied only to certain articles. So that we are in the position of having the large number of men looking for work constantly and rapidly increasing, with no work for them unless we can relieve the manufacturers from this burden under which they are placed to-day, by which their working capital is tied up and they are not able to resume work, and that applies to some of the large concerns as well as the small ones.

Mr. RODENBERG. Is it not true that unless you have authority to make this adjustment, some of these contractors are really facing bankruptcy?

Mr. CROWELL. We have had telegrams from all over the country urging that unless this is done within a week we will have firms going into bankruptcy, and others state two weeks.

Mr. HARRISON. I notice you propose by this bill that 10 days' notice to the clerk of the House must be published.

Secretary BAKER. That is an amendment made in the House committee to the bill, which we regret very much.

Mr. CROWELL. I think that a plan of settlement being adopted would act as a great stabilizer to industry. These men, most of them, have borrowed money, and the banks are looking very skeptically at these contracts for the reason that the question is not settled. I think a settlement would go a long way toward relieving the difficulties that the business men are under.

Mr. CAMPBELL. Mr. Crowell, are these contractors who have dealt with the Government on these matters really as hard up as they claim, or is it just a claim they are making now to force the Government into an adjustment of these matters at an early time?

Mr. CROWELL. There is no doubt in my mind that they are in the position that I have stated, and in a great many cases I know, because we have accountants in their work, in many cases we have advanced money and have full knowledge of their financial condition. I wouldn't hesitate to make the statement that the statement I have made is true to my knowledge.

Mr. CAMPBELL. We have heard much of profiteers and excess profits and war profits. I take it that these profits were made by contractors with the Government, such as you now speak of.

Mr. CROWELL. I think in a general way the more patriotic of our contractors are the very fellows who have gone ahead in this informal way and not waited for a formal contract approved by their attorneys.

Mr. SNELL. It would apply to small contractors more than large contractors, wouldn't it?

Mr. CROWELL. Thousands of small ones.

Mr. SNELL. That need the money, I mean.

Mr. CROWELL. Yes, sir.

Mr. CAMPBELL. What per cent of contracts made by the department are affected by this legislation?

Mr. CROWELL. At least 25 per cent.

The CHAIRMAN. In your opinion this legislation is necessary in order to facilitate these industries to get back on a peace basis?

Mr. CROWELL. Yes, sir. We have evidence of that every day, Mr. Chairman, in the labor reports we get. The number of cities showing a surplus of labor is increasing every day and those men can not get to work until the employers of labor can get their money out and start on a commercial basis, and to-day they are not able to do so.

Mr. HARRISON. Is there anything else in this bill that the War Department objects to?

Mr. CROWELL. I guess there is, the 10-day question. I will ask Mr. Dorr to answer that question.

Mr. DORR. There is one or two matters which are possibly incomplete in view of the situation abroad. There is one very broad thing in the bill which seems to us to occasion difficulties. On page 3, lines 18 to 25, there is a proviso, "That payment under such agreement

shall not exceed the fair value of the property transferred or delivered and accepted by the United States as determined by the Secretary of War, and where no property has been transferred, delivered, or accepted payment shall not be in excess of the actual cost incurred in preparation for performance, as such cost is determined by said Secretary." As I read that proviso it would permit payment not in excess of the fair value of the property where property had actually been delivered. That is, where there was actual delivery. On the other hand, it would also permit reimbursement for performance where the work had been stopped short of actual delivery, and there had been no actual deliveries whatsoever, and in the third situation where there had been deliveries and there were still further preparations and further performances, and still there is that situation to provide for, and we have suggested an amendment to the Military Affairs Committee to cover that ground where, although there have been some deliveries, there is still further expense in further preparation for further performance, and that further performance has been checked by the signing of the armistice. I might say this proviso was taken up by the Military Affairs Committee by a bill framed by the Comptroller and by us submitted to the Military Affairs Committee.

The CHAIRMAN. This committee would have to depend upon the Military Affairs Committee of the House to make that amendment. We are merely proposing to give it a preferential right on the calendar.

Mr. DORR. And again it might be necessary, as Mr. Stettinius has pointed out, to insert Governments as well as civilians, and possibly a proviso would be necessary permitting the adjustment of the prospective profits in the instances abroad on which Mr. Stettinius and Col. Cutcheon have pointed out.

The CHAIRMAN. Are there any further observations you care to make, Mr. Crowell?

Mr. CROWELL. I think not, except to say in this country we are not allowing prospective profits in the settlements.

The CHAIRMAN. We would be glad to hear from Mr. Dorr if he cares to be heard.

Mr. DORR. I don't think there is anything I can add, Mr. Chairman. It is all before the committee.

The CHAIRMAN. I think if there are no other gentlemen from the War Department that care to be heard the committee would be very glad to hear from Mr. Sherley.

STATEMENT OF HON. SWAGAR SHERLEY, MEMBER OF CONGRESS FROM KENTUCKY AND CHAIRMAN OF THE COMMITTEE ON APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES.

Mr. SHERLEY. I don't know that I care to talk particularly about the bill, which I haven't examined with enough care to come to a final conclusion, though later on I will make a suggestion as to legislation I think ought to be had, whether carried as part of this bill or not. But I do want to say that I have been engaged with my committee for nearly a month past trying to check up with the moneys now with these various departments unexpended and the liabilities that

exist against those moneys in order to ascertain what proportion of moneys heretofore appropriated can be returned into the Treasury. That hearing develops several situations which make the work of the committee exceedingly difficult and necessarily, in some degree, unsatisfactory, and yet which perhaps can not be avoided.

I find that there is no accurate knowledge on the part of the offices here of the expenditures abroad. They know what moneys have been placed to the credits of various offices abroad, but the extent to which those moneys have been actually disbursed or the liabilities against them and other Treasury funds that have been created they are not yet in a position to tell us. I mention that not in a way of criticism, because there are difficulties that those who know most about the work will appreciate most, and only those who are ignorant of the problems will dismiss, but it is a fact which makes difficult of ascertainment of governmental liabilities involved in France and England. Then in America there are unquestionably a large number of offices of the Government that do not have the status of legal obligations growing out of binding contracts. Doubtless that has all been gone into. The Ordnance Department, in pursuance to their final sheets, have presented very large sums under the head of reservations which I think grew out of this situation, a project just about determined upon as necessary to be undertaken, steps would be taken to carry it out and various individuals would incur liabilities on their own part in furtherance of this project, but it would not always have reached the point of the final binding contract. It constitutes a moral obligation on the part of the Government as clear as if the matter had reached final signature and a legal contract. Then there have been a great many instances in which officers have undertaken to bind the Government in the name of a superior officer. Under the decision of the comptroller, with which you are familiar, it has been held that is not a binding contract. It is a contract any self-respecting government would respect, and I have no doubt this one will respect, so it is perfectly patent that legislation is in order to put men who have in good faith incurred obligations and to whom the Government in good faith owes money in a position where they have a legal status.

But I think there is an economic and a governmental phase of this matter that is very much bigger than the purely technical one. To my mind, if you delay over a period of months, and perhaps of years, the adjustment of the contracts and settlements you will not adjust them as reasonably from the Government's standpoint as you can do it now, and you will entail hardships upon individuals that would be unwarranted. If we are going to go back to the old condition, to have claims presented either through the Court of Claims and through the Committee on Claims and Congress subsequently making appropriations our great, great grandchildren will never see the adjustment of a great proportion of these matters, and many of the men who have the knowledge to protect the Government are rapidly leaving the Government. Their knowledge will not be anything like as good to the Government 60 days after they leave as to-day, so that from every standpoint it is highly desirable that there should be adjustment. It is highly desirable from a standpoint of Treasury financing. If the Committee on Appropriations had any real knowledge as to the money that is necessary to liquidate the outstanding obligations, it could cover into the Treasury much larger sums than

it will cover, and the matter of financing that we will still have to do in the way of taxes and loans would be made more certain.

I think there ought to be legislation which provides for speedy adjustment of that part of the contracts or agreements that exist between the Government and the third party that may be the subject of dispute. There are unquestionably coming up questions where hundreds of instances in which the Government on one hand and the private party on another will get to an agreement to within $100,000 outstanding, the Government on one hand contending that it shouldn't pay that much or the contractor or third party contending it should. If legislation were had permitting the Government and the contractors to refer to arbitration those disputed matters with the decision of the arbitrators to be final I believe that every business man in the country, largely speaking, would gladly avail himself of the opportunity of a speedy adjustment. Under the law, I take it, you can not deny to a man his rights to a day in court when he has a contract, but you don't need to bother with that situation as a practical thing, because of the desire business men will have for a speedy adjustment, because to-day there isn't a great producing exchange, a great board of trade, that doesn't weekly settle amounts running into the thousands of dollars with a few hours of conference before arbitrators who have the power to make a final binding award, and if some such provision as that was enacted in addition to this proposal, which I take it is a proposal to legalize agreement and to authorize complete settlement, you would then provide a machinery for the rapid adjustment of these matters.

Now, it is abosultely impossible for Congress, or any committee of Congress, to undertake to make an examination into contracts in order to determine what would or would not be an equitable settlement. In the first place they could not do it, in two years, if they did nothing else but read the contracts—the average man has no conception of the magnitude of the Government's undertakings notwithstanding we constantly talk about them. Working every day, for weeks, I have been unable to touch only in a superficial way some of the big oustanding things in connection with governmental liabilities. To undertake to go into the details of it is impossible. It seems to me the Government is forced to one of two alternatives, either it must trust the agencies that it trusted to spend the money, that it voted millions and millions of dollars to—by trusting, I don't mean without proper safeguards, but in any event you have either got to trust those agencies or you have got to throw the whole thing back into the slow process of court trials or congressional claims. If you ever throw it into the courts, generally speaking, or into congressional adjustments, there is not a man here living who will be living when a third of these claims will be liquidated or adjusted.

Mr. HARRISON. What was the policy followed in the Civil War?

Mr. SHERLEY. I haven't undertaken to find out, but we know something about the lack of some policy because we see that to-day.

Mr. GARRETT. Well, the history of that is not a very delightful chapter in the history of our country. Various methods were employed.

Mr. SHERLEY. I have said about all that I care to say. It is also true that there are a great many instances in which you will very seriously curtail the industrial activities of America by a failure to

properly liquidate matters and that doesn't necessarily mean that men are bankrupt who are affected by a delay. All of us have learned to discount the zeal of men for other people and their own lamentations concerning themselves where the Government is concerned, and yet it necessarily follows that the strongest concern that has turned into practically a governmental activity, so that it is doing from 80 to 90 and 100 per cent of Government work, has so tied its working capital, even assuming that it did, as they usually did, have to come to the Government for capital. It is so tied up with Government work that the taking up of new business and the resumption of the old business of the company is impossible unless it is possible for it to get freed the money it has tied up with working material, etc., and any man that has any proper consideration must see that there must be a liquidation of a large part of these contracts in order for these firms to go along with their ordinary business.

And there is still another thing; all the world is talking about high prices and doing very little to get rid of them. We will never get down to low prices until we get rid of the constant inflation of credits, whether they are governmental or private. If you force men who have their working capital tied up in Government work to go out into the markets to borrow further in order to carry on their industrial activities while they are waiting their adjustment of the Government activities, you, just to that extent, further inflate the credit of the Government and will keep this country unstable along with others, and I can't imagine nothing more important than we should clean up Government activities, bringing the Government back to its own business and the people to theirs.

The CHAIRMAN. Mr. Dent, the committee would be glad to hear anything you may have to say.

STATEMENT OF HON. H. S. DENT, A REPRESENTATIVE FROM ALABAMA AND CHAIRMAN OF THE COMMITTEE ON MILITARY AFFAIRS OF THE HOUSE OF REPRESENTATIVES.

Mr. DENT. Mr. Chairman, I don't think there can be any two sides to the proposition that the Government of the United States ought to be at least authorized and its agents permitted to carry out an honest obligation made under the authority of those who were acting for the Government during this emergency. As I say, I don't think there can be two sides to that proposition. There may be some difference as to the form which it should take.

The Military Affairs Committee of the House gave very careful consideration to this matter. We had full and complete hearings on it and we reached a unanimous conclusion that there should be some legislation. We agreed upon a form. We undertook to put provisions around the authorities that would protect the Government from graft or corruption. There are some provisions or some language, perhaps, that might be struck out and amendments, perhaps, that should be made on the floor of the House as probably the last provision, which requires that the names of such contractors and the amount of such partial or final settlement filed with the Clerk of the House for the information of the House and Senate in the Congressional Record or in the Official Bulletin or as a public document 10 days before confirmation and payment is authorized upon

such contracts. I opposed that because I considered it a handicap in handling the adjustment of these claims.

I said the committee unanimously reported the bill; in order to be perfectly frank, one member of the committee who has recently been placed on the committee stated he hadn't had time to make an investigation for himself and reserved his decision but did not vote against the report of the bill.

I think that is all involved in this matter, except I may conclude with this statement, which I may have frequently made and which was stated in different language by Mr. Snell a few moments ago, that this bill does nothing more nor less than to authorize the Government of the United States to discharge obligations which, had the obligations taken place under similar circumstances between private individuals, would be enforced by any court of justice in the land.

Mr. HARRISON. Mr. Dent, before you sit down, the resolution for a rule has not been introduced yet?

Mr. DENT. Yes; I introduced it. It is in the general form. Authorizes amendments and provides for a vote after two hours of debate.

The CHAIRMAN. Mr. Kahn, the committee would be glad to hear from you.

STATEMENT OF HON. JULIUS KAHN, MEMBER OF CONGRESS FROM THE STATE OF CALIFORNIA AND MEMBER OF THE COMMITTEE ON MILITARY AFFAIRS OF THE HOUSE OF REPRESENTATIVES.

Mr. KAHN. There is nothing that I can add to what has already been said. Of course, if these agreements had been executed in proper form there would be no need for this legislation. Because of the fact that they are purely informal, they can not be dealt with unless the legislation is passed, and I fully concur in what has been said here, that this matter ought to be done very expeditiously.

Mr. SNELL. I understood that this legislation was needed on account of formal contracts to adjust them.

Mr. KAHN. No; there are no formal contracts, I understand, contemplated by this legislation. I understand from the War Department that formal contracts properly executed are in process of adjustment at this time. That there are various boards appointed by the department for the purpose of taking up the claims of those who entered into those contracts, and they are being, day after day, compromised.

Mr. SNELL. The provision in this bill seems to be for a readjustment of formal contracts.

Mr. KAHN. Not the formal contracts. There are no contracts contemplated by the bill.

Mr. SNELL. It doesn't provide for the readjustment of those contracts?

Mr. KAHN. No.

Mr. SNELL. I don't mean to say that the power ought not to be given; do you mean executed contracts?

Mr. KAHN. I mean properly executed and legally executed, that were signed and delivered, etc.

Mr. GARRETT. The very first line beginning on page 3 as reported, "That the Secretary of War be and he is hereby authorized to adjust, pay, or discharge any agreement, express or implied," I take it that that word "express" means——

Mr. KAHN. I take it it means that if agreement had been entered into by private individuals they would be construed by the courts as contracts but by reason of the fact that the Government requires specific things to be done in order to make a valid contract, the men who went ahead without having those specific things done are now in the attitude where they can not go to court.

Mr. GARRETT. I don't undertake to say that the Secretary of War ought not to have this power. I am inclined to think he should, but I don't think we ought to have any misunderstanding about it.

Mr. KAHN. Line 17, "and which agreement as not executed in the manner prescribed by law."

Secretary BAKER. As we understand it, Mr. Chairman, the comptroller's ruling does not affect various contracts that are executed in accordance with all the requirements of the law; those we can adjust and those we are adjusting now so that we need no additional power on that subject. The language on line 17 referred to by Mr. Garrett covers all the matters.

Mr. SNELL. So this refers to no contracts that have been signed?

Secretary BAKER. No.

Mr. KAHN. The War Department is appointing one board and sending to another board and it is gone over again and then finally referred to a third board in the War Department here for a final review so that the Government's rights are being safeguarded by the department as well as they can be.

The CHAIRMAN. Mr. Secretary and gentlemen, we thank you for your presence here and the statements you have made. Is anyone here who wishes to be heard in opposition to this resolution?

Mr. DENT. Not that I know of; nobody objected on the floor because I never gave them an opportunity to object, but Mr. Doolittle of Kansas notified me he was going to object.

Thereupon at 12 o'clock the committee adjourned.

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